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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)

Petition of U S WEST Communications,
Inc. for a Declaratory Ruling Regarding)
the Provision of National Directory)
Assistance)

Docket No. 97-172

COMMENTS OF AT&T CORP.

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SUMMARY

U S WEST's national directory assistance service provides national numbers to customers located within its serving areas who dial 1+411. U S WEST provides interLATA transport as part of that service, provides information relating only to interLATA calls, and displaces calls that otherwise would be carried by long-distance companies. For each of these reasons, U S WEST's provision of that service, therefore, is the provision of in-region interLATA service forbidden by section 271(a) of the Communications Act, until such time as U S WEST applies for and receives FCC authority under section 271(d). That this national directory assistance service offends section 271 is confirmed by decisions of the District Court and the Court of Appeals under the Modification of Final Judgment. Section 271 continues in effect all of the MFJ's prohibitions, except where that section specifically provides, or where the FCC issues subsequent orders authorizing service.

In fact, U S WEST's in-region national directory assistance service is only the latest Bell Operating Company attempt to provide interLATA services that would have been barred by the MFJ, and that are now barred by section 271, without first having received Commission authority to do so. And, it is further an example of recent BOC attempts to justify those services by claiming (without any basis) that they fall within the narrow exception for "official services" permitted by the MFJ and now by section 271(f). The Commission should take the

opportunity to reject these spurious BOC efforts to circumvent section 271.

Moreover, U S WEST's national directory assistance service is subject to section 251's dialing parity and unbundling and nondiscrimination requirements. The Commission has previously recognized, on two separate occasions, the unfair advantages that ILECs could achieve by the provision of service through abbreviated, well-recognized dialing arrangements. The Eighth Circuit has confirmed that directory assistance is a service that must be unbundled under section 251. Thus, apart from the issues raised under section 271, U S WEST could not provide that service consistent with section 251, except on an unbundled and nondiscriminatory basis.

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COMMENTS OF AT&T CORP.

Pursuant to the Commission's Public Notice seeking comment, DA 97-1634, released on August 1, 1997, and Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, AT&T Corp. ("AT&T") hereby submits its comments on the Petition of U S WEST Communications, Inc. ("U S WEST") for a Declaratory Ruling Regarding the Provision of National Directory Assistance.

BACKGROUND

U S WEST's petition for a declaratory ruling that its national directory assistance service comports with the Communications Act of 1934, as amended by the Telecommunications Act of 1996, and the Commission's rules is only the latest example of the Bell operating companies' attempting to offer prohibited in-region interLATA services prior to the time they are authorized to do so by the Commission. The BOCs attempt to justify these services as U S WEST has done here, by claiming that section 271 has a radically different scope than the

interexchange restriction of the Modification of Final Judgment and by stretching the limited MFJ exception for "official services" beyond any recognition. Moreover, U S WEST's service is another stark example of the BOCs' unwillingness to comply with the Act's unbundling and nondiscrimination requirements. In this proceeding, the Commission should make clear that the official services exception is -- as under the MFJ -- narrowly restricted, and that an in-region national directory assistance service does not comply with section 271(a) of the Act.

Moreover, the Commission should make clear that, even after a BOC obtains in-region interLATA authority under Section 271, a BOC offering a national directory assistance service must comply with the Act's (and the Commission's) unbundling and nondiscrimination requirements by offering dialing parity to other carriers and by making both the service and the underlying information available to other carriers as unbundled network elements.

U S WEST describes its national directory assistance service as a service that provides national telephone numbers and that is available to customers in Colorado and New Mexico who dial 1+411. Petition, p. 3. If the caller requests a local number, the operator answering the call provides the number; if the requested number is not local, the answering operator transfers the caller to a second operator who has access to the national number database. Id.

Moreover, U S WEST states that its national directory assistance service is provided on a "centralized basis": that it does not have operator centers in each LATA and that calls to its

national directory assistance service often are carried by U S WEST across LATA boundaries. Id. Moreover, the operator answering the call will typically make another interLATA call in order to access U S WEST's number database. Id. U S WEST claims that its local directory assistance service has been centrally configured since before the 1984 divestiture of the BOCs from AT&T. Id. at 3-4.

I. U S WEST's National Directory Assistance Service Is Not Permitted By Section 271.

U S WEST does not claim that it has received authority from the Commission pursuant to section 271 of the Act (47 U.S.C. § 271(d)) permitting it to offer interLATA telecommunications in any state in its region. In fact, it has not yet even applied to do so. Its national directory assistance service is permissible only if it meets the terms of that section, which it plainly does not.

Moreover, U S WEST does not attempt to establish that its national directory assistance service would have been permitted under the interexchange provisions of the MFJ. Rather, it argues that the scope of section 271 is different and that national directory assistance service does not offend section 271. This is simply wrong. Because BOC provision of in-region national directory assistance service would have violated the MFJ, it now violates section 271.

A. National Directory Assistance Service Would Have Violated The MFJ, and Plainly Violates Section 271.

It is clear that U S WEST's in-region national directory assistance service violates section 271, and would not have been permitted under the MFJ. U S WEST provides interLATA transport in two phases of its service. First, it transports calls from customers located within its serving areas to centralized directory assistance operators across LATA boundaries. Second, its directory assistance operators may transfer the call, or make a database query, across LATA boundaries. Petition, p. 3. The Act could not be clearer that, absent obtaining authority pursuant to section 271, a BOC cannot engage in these activities.

Specifically, a BOC may not provide "interLATA services" (§ 271(a)). The Act clearly defines "interLATA service" as "telecommunications between a point located in a local access and transport area and a point located outside such area," and it defines telecommunications as "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received." 47 U.S.C. § 153(21), (43). Yet, U S WEST engages in these activities when it transports directory assistance calls across LATA boundaries. And while, as shown below, the Decree Court permitted such activity as an official service when done in connection with the provision of intraLATA directory assistance service -- the provision of a telephone number to an end user located in the same LATA as the

number sought -- it did not authorize such activities in connection with the provision of numbers served outside of the LATA of the end user. Thus, even if U S WEST could now provide to end users telephone numbers without regard to the LATA of the end user seeking the number and the LATA of the requested number, it could not do so on a centralized basis, for U S WEST would then be transporting calls across LATA boundaries for a purpose other than the one previously authorized by the Decree Court.

Indeed, in 1983, the Decree Court specifically held that 800 Service Directory Assistance "is an interexchange, inter-LATA service" because it performs "interexchange functions." United States v. Western Elec. Co., 569 F. Supp. 1057, 1102 (D.D.C. 1983). That service provided national directory assistance service for 800 numbers; U S WEST's service differs in no regard except that U S WEST's service is much broader in scope. Moreover, the Decree Court clearly held, most clearly in the so-called Shared Tenant Services decision, that services that are associated only with the provision and selection of interLATA communications were themselves prohibited to the BOCs by the MFJ. See United States v. Western Elec. Co., 627 F. Supp. 1090, 1100-02 (D.D.C. 1986). One significant part of the rationale for the Decree Court's decision there was that such activity by the BOCs would give them an economic stake in services otherwise provided by competitive interexchange carriers. Id.

National directory assistance service is also not "official services" under the MFJ. Although the Decree Court

permitted the BOCs to provide interexchange transport in connection with official services, this exception was limited to four enumerated services that constituted internal "communications between personnel or equipment of [a BOC] [or] communications between [BOCs] and their customers." 569 F. Supp. at 1097; see also id. at 1097-100. In this regard, the Decree Court noted that the exception for local directory assistance service and other official services would not offend the theory of the Decree because the BOCs would not thereby be placed in competition with the IXC's. Id. at 1100-01.

Significantly, any call that U S WEST handles over its in-region national directory assistance service is a call that previously would have been carried by an IXC. U S WEST has, before receiving permission to do so under section 271, placed itself in competition with the IXC's. Compare United States v. Western Elec. Co., No. 82-0192, 1992 WL 43583, Slip Op. at 5-6 (D.D.C., Feb. 10, 1992) (rejecting part of BOC waiver request that would have permitted BOCs to transport independent telephone companies' 800 database queries because it would place BOCs in competition with IXC's and therefore "repeal the interLATA restriction for this category of calls").

For these reasons, U S WEST's assertion that its national directory assistance service is no different from the local directory assistance service that it offered on a centralized basis at divestiture and that it is therefore a permissible "official service" is incorrect. Moreover, both the Decree Court and the Court of Appeals made clear under the MFJ

that the "official services" exception was limited to those services being offered in 1983, and that the BOCs could not attempt to provide other, similar services by claiming that they were analogous to permitted official services such as directory assistance. Thus, in the time-and-weather decision, the Decree Court found that the BOCs would be permitted to offer time and weather services on a centralized basis, but granted a specific waiver of the Decree. It stated that "the time and weather services do not properly fall within the four basic categories of 'official services' set out in the decree, and to classify them as such would set an undesirable precedent." United States v. Western Elec. Co., 578 F. Supp. 658, 661 (D.D.C. 1983). And, in the Gateway decision, the Decree Court rejected an analogy to official services, stating that official services "comprise essentially those communications within an Operating Company and between the Company and its customers that are necessary to run the telephone system." United States v. Western Elec. Co., 1989-1 Trade Cas. ¶ 68,400, 1989 WL 21922, Slip Op. at 8-9 (D.D.C., Jan. 24, 1989) (emphasis added); see also id. at 12 ("the Court has consistently interpreted the official services exception narrowly"). On appeal in that same proceeding, the Court of Appeals wrote that the official services exception was the outcome of "pragmatism" and not of "logical" interpretation of the Decree and that the official services exception therefore should be narrowly construed. United States v. Western Elec. Co., 907 F.2d 160, 164 (D.C. Cir. 1990).

In this regard, U S WEST's attempt to describe its new service as an official service and therefore permissible under section 271(f) is only the latest BOC attempt to stretch official services beyond all reasonable boundaries. For example, Ameritech has recently begun providing unrestricted, in-region interLATA services to a number of its employees at their homes.¹ Ameritech calls this its "Friendly User Trial," and Ameritech claims that it is permitted to make this offering, which directly competes with services provided by interexchange carriers, under the official services exception notwithstanding that none of the calls placed under this trial are internal "communications between personnel or equipment of [a BOC] [or] communications between [BOCs] and their customers." 569 F. Supp. at 1097. The Commission should -- as the Decree Court did itself -- make clear that the official services exception is restricted to those four categories of services explicitly approved by the District Court in 1983.

B. The MFJ's Interexchange Restriction And Section 271 Have The Same Scope.

Second, U S WEST's extended argument that the scope of section 271(a)'s prohibition on BOCs' "providing interLATA services" is different from (and narrower than) the MFJ's prohibition on interexchange telecommunications services is both irrelevant and erroneous. As an initial matter, U S WEST's

¹ Ameritech correspondence to Regina Keeney, Chief Common Carrier Bureau (April 21, 1997).

argument is irrelevant because U S WEST undeniably provides in-region interLATA services when customers call its national directory assistance service, when the operators transfer the calls between service centers, and when the operators make queries to centralized databases. Each of these three activities, by U S WEST's description, is itself interLATA telecommunications. And, as discussed above, these in-region interLATA telecommunications are not permitted by any exception to section 271(a).

Moreover, U S WEST's contention that section 271(a)'s prohibition on in-region interLATA services differs in scope from the MFJ's prohibition on interexchange telecommunications services is erroneous. Section 271 codifies the MFJ's interexchange restriction, by stating that no BOC "may provide interLATA services except as provided in this section." That is confirmed by the fact that the only statutory exceptions to the MFJ's ban are out-of-region services (§ 271(a)(2)) and incidental interLATA services (§ 271(a)(3) & (g)), or activity permitted under the MFJ by waiver (§ 271(f)).

U S WEST contends that section 271(a) prohibits a narrower range of activities than did the MFJ because the MFJ forbade "interexchange telecommunications services" while section 271(a) forbids only "interLATA services" and that section 153 defines "interLATA services" as only "interLATA telecommunications" -- i.e., the actual transmission of information across LATA boundaries. In support, U S WEST refers to Judge Greene's discussion in the Shared Tenant Services

decision to the effect that the Decree's restriction on interexchange telecommunications services was broader than a restriction only on "interexchange telecommunications" would have been. Petition, p. 8 (discussing United States v. Western Elec. Co., 627 F. Supp. 1090 (D.D.C. 1986)).

This argument is baseless. Section 271(a) itself includes the term "services" and section 271 otherwise mirrors the MFJ. Thus, a reading of the plain language of the statute confirms that section 271 is congruent with the MFJ (except where that section explicitly permits certain BOC interLATA services). And, the legislative history confirms that section 271 would prohibit all of the activities prohibited by the MFJ, unless the statute or subsequent FCC order explicitly permitted them.² It would be quite remarkable if Congress did in fact effect, without any comment, such a significant change in the permitted activities of BOCs through the back-door means of defining "interLATA services." In fact, the definition of interLATA services did not draw a single sentence of explanation either in

² Thus, the Conference Report describes the effect of section 271 as follows:

New section 271(b)(1) requires a BOC to obtain Commission authorization prior to offering interLATA services within its region unless those services are previously authorized, as defined in new section 271(f), or "incidental" to the provision of another service, as defined in new section 271(g), in which case, the interLATA service may be offered after the date of enactment. New section 271(b)(2) permits a BOC to offer out-of-region services immediately after the date of enactment.

the Conference Report or in the final House Report (from which bill the final definition was taken).³

In this regard, the Commission has to date, uniformly treated the section 271 restriction on in-region interLATA services as coextensive with the MFJ's prohibition on interexchange telecommunications services. To do otherwise would violate the clear purpose of the Telecommunications Act. See, e.g., Applications of NYNEX Corp. and Bell Atlantic Corp., Docket NSD-L-96-10, FCC No. 97-268, at ¶ 20 n.27 (Aug. 14, 1997) ("All Bell Operating Companies have generally been prohibited from offering interLATA services since 1982 by the MFJ ... and were subsequently prohibited from providing in-region interLATA services by Section 271 of the Communications Act.").⁴

II. U S WEST Has Not Satisfied Section 251 In Providing National Directory Assistance Service.

In the N11 Order,⁵ the Commission recognized the important advantages of abbreviated dialing arrangements and directly stated that the BOCs must provide "nondiscriminatory

³ See H. Conf. Rep. 104-458, at 116; H.R. Rep. 104-204, at 125-26 (reporting on H. 1555).

⁴ See also, e.g., NYNEX Long Distance Co. Application for Authority Pursuant to Section 214, ITC Docket 96-125, 11 FCC Rcd. 8685, 8690 n. 21 (1996); Implementation of the Non-Accounting Safeguards of Sections 271-272 of the Communications Act of 1934, as amended, CC Docket 96-149, FCC No. 96-489, at ¶¶ 30-47 (Dec. 24, 1996).

⁵ The Use of N11 Codes and Other Abbreviated Dialing Arrangements, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket 92-107, FCC No. 97-51 (Feb. 19, 1997) ("N11 Order").

access to directory assistance services." N11 Order ¶ 48. U S WEST claims that national directory assistance service does not offend that order, or the provisions of the Act on which it is based, because national directory assistance service is not an "enhanced" service.

Whatever the merit of U S WEST's argument that national directory assistance is not an enhanced service, that contention would not eliminate U S WEST's obligation pursuant to section 251 of the Act to provide access to (i) 411 dialing, (ii) database information, and (iii) the nationwide directory assistance service itself to other carriers that requested them. Section 251(b)(3) unambiguously imposes upon all LECs "[t]he duty to provide dialing parity to competing providers of telephone exchange service and telephone toll service, and the duty to permit all such providers to have nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing, with no unreasonable dialing delays." 47 U.S.C. § 251(b)(3). Similarly, section 251(c)(3) requires all ILECs "to provide ... nondiscriminatory access to network elements on an unbundled basis at any technically feasible point." 47 U.S.C. § 251(c)(3).

The FCC explicitly applied these provisions in two proceedings in which it held that 411 dialing must be provided to other carriers on a nondiscriminatory basis. In its Second Report and Order in CC Docket No. 96-98, the Commission found that section 251 requires ILECs to provide nondiscriminatory

access to both 411 and 555-1212.⁶ The Eighth Circuit's partial reversal of that order (California v. FCC, No. 96-3519 (8th Cir., Aug. 22, 1997)) on jurisdictional grounds does not affect the Commission's obligation, in this declaratory proceeding, to adhere to its previous interpretation of section 251. Similarly, in the N11 Order, the Commission correctly found that it would be "anticompetitive" to deny CLECs' customers the ability to access repair and business offices by dialing 611 and 911. N11 Order ¶ 46.

Similarly, section 251 requires that the directory assistance service itself, and any underlying data, each be provided as unbundled network elements. In this regard, the Eighth Circuit's opinion reviewing the FCC's First Report and Order in the local competition docket rejected LEC claims that "operator services and directory assistance" were not subject to the unbundling requirements. Iowa Utilities Board v. FCC, No. 96-3321, Slip Op. at 131 (8th Cir., July 18, 1997). The court wrote:

Our agreement with the FCC's determination that the Act broadly defines the term 'network element' leads us also to agree with the Commission's conclusion that operator services, directory assistance, caller I.D., call forwarding, and call waiting are network elements that are subject to unbundling. We believe that operator services and directory assistance qualify as features, functions, or capabilities that are provided by facilities and equipment that are used in the provision of telecommunications services. The commercial offering of phone services to the public and

⁶ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Second Report and Order and Memorandum Opinion and Order, CC Docket No. 96-98, FCC No. 96-333, at ¶ 151.

the specific transmission of phone calls between locations implicates the use of operator services and directory assistance.

Id. at 133.

The FCC should therefore make clear that U S WEST is required under § 251(b) to offer N11 dialing parity and that, pursuant to § 251(c), U S WEST's national directory assistance service must be unbundled and offered on a nondiscriminatory basis to all requesting carriers. If ILECs alone were permitted to offer national directory assistance service through "nationally-recognized numbers for directory assistance" (Second Report and Order ¶ 149), they would gain a significant competitive advantage.

CONCLUSION

The Commission should find that U S WEST's national directory assistance service is not permitted under section 271 of the Act. In addition to its ruling on the 271 issue, the Commission should find that national directory assistance service could not be provided unless it is unbundled and provided to any requesting carrier on a nondiscriminatory basis under section 251 of the Act.

Respectfully submitted,

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CERTIFICATE OF SERVICE

James B. Speta, an attorney, by this means certifies that he caused copies of the foregoing Comments of AT&T Corp. to be served upon the following persons on September 2, 1997:

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